

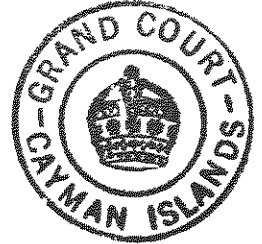
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**
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5 **SCA No.: 5/2013**
6 **CASE No.: 01034/2012**
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9 **JOSEPH BONSU-AKOTO**

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11 **V**

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13 **REGINA**
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17 **Appearances:**

Mr. Joseph Bonsu-Akoto, in person

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19 **Mr. Neil Kumar on behalf of the**
20 **Respondent/DPP**
21

22 **Before:**

The Hon. Mr. Justice Malcolm Swift (Actg.)

23 **Heard:**

7TH February 2014
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25 **JUDGMENT**
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- 27 1. On the 7th February 2014 I heard the appeal against conviction and sentence of Dr.
28 Bonsu-Akoto (the Appellant). The Appellant was by choice unrepresented. He
29 appealed by motion against conviction by Magistrate Gunn in the Summary Court
30 on the 17th December 2012 of a single charge of over-staying contrary to Section 78
31 (1)(c) of the Immigration Law (2009 Revision), and a sentence of CI\$5,000.00
32 (with 6 months' imprisonment in default of payment) imposed on the 26th February
33 2013.
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- 1 2. The grounds of appeal were that:
- 2 i. The Summary Court erred both in fact and in law and/or in the application of
- 3 the Criminal Procedure Code (2011 Revision) in deciding to convict;
- 4 ii. The case against the Appellant and the decision of the Magistrate were
- 5 motivated by racial discrimination; and
- 6 iii. The sentence was both “unusual and cruel”.



7 The Appellant also claimed that his arrest and prosecution had no basis in fact

8 or in law.

9 3. The Appellant submitted numerous documents for my consideration most of which

10 were before the Summary Court. At this hearing the Appellant also handed to me

11 two emails, apparently dated February 2013 from the Ministry of Finance in answer

12 to emails from the Appellant (which were not handed to me) in which he was

13 claiming payment for services, and a counter offer in full and final settlement of all

14 claims against the Government was being proposed. For reasons which will appear

15 later, I do not believe that these emails are relevant to the issues in dispute.

16 4. Accordingly I read the Appellant’s grounds of appeal, all the documents in the

17 Appeal Bundle paginated from 1 to 188, the “Affidavit to Support Notice of

18 Intention to Appeal”, the document entitled “The Defence Statement Details and

19 Statement of Claim”, the document entitled “The Statement of Defence part 2”, the

20 Social Inquiry Report dated 18th February 2013 with annexes, the document entitled

21 “Sentencing Statement” and the five Modules prepared by the Appellant. I also

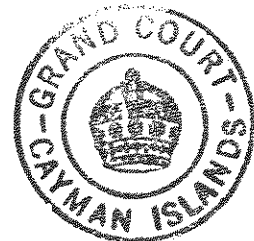
22 read the file of documents and skeleton argument prepared by the Respondent (a

23 copy of which was also provided to the Appellant).

1 5. I commenced the appeal hearing by investigating whether the Appellant was asking
2 for a re-hearing of the evidence and whether a re-hearing was in fact appropriate.
3 The Appellant assured me that all the relevant evidence had been called or referred
4 to at the Summary Court hearing, that he had every opportunity (of which he
5 availed himself) to cross-examine witnesses and to adduce evidence and that he
6 himself gave evidence and was able to address the Summary Court on all the issues.
7 The emails dated February 2013 were the only post-hearing documents the
8 Appellant claimed were relevant to the case but I have concluded that the emails
9 would have added nothing of any materiality to the issues and evidence in the
10 Summary Court as they relate only to whether the Government was seeking to put
11 an end to the Appellant's disputed claim to be entitled to payment for services he
12 claimed to have rendered.

13 6. I have therefore decided that a re-hearing is inappropriate as the Summary Court
14 proceedings were fairly, fully and properly conducted and the Appellant played a
15 full and effective part in them. No additional issues arise for determination and
16 there is no relevant fresh evidence bearing on the issues in the appeal.

17 7. I then heard the Appellant's submissions on the matters subject to the appeal. He
18 addressed me at length. I will refer to his submissions when dealing with the
19 decisions of the Magistrate. On the conclusion of the Appellant's submissions, I
20 did not call upon the Respondent to reply as nothing had been raised by the
21 Appellant calling for an answer from the Respondent. The Respondent's case had
22 been clearly set out in their skeleton argument.



1 8. It is necessary to point out that the Magistrate reached her conclusions in a lengthy,
2 carefully reasoned and clear Judgment setting out the issues, arguments and
3 evidence with admirable cogency.

4 9. Those conclusions of law (with which I agree and am unable to fault) are as
5 follows:-

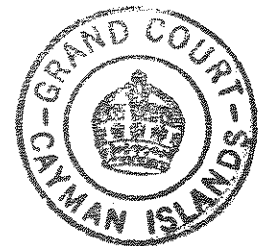
6 (a) The burden of proof rests on the Respondent throughout. This was not
7 disputed by the Appellant;

8 (b) The prosecution was not time-barred because the offence is a
9 continuing one. The Appellant argued that this was not the case and
10 that the prosecution was out of time. I rejected that argument in the
11 course of submissions for the reasons set out in paragraph 12(ii) of the
12 Respondent's skeleton argument;

13 (c) The offence is not an offence of strict liability and requires *mens rea*
14 which was established by the evidence. The Appellant does not dispute
15 this requirement but argued that he honestly thought he was entitled to
16 remain and reside on the island;

17 (d) The Appellant is liable for his own actions in complying with or not
18 complying with the Immigration Law. This was not in serious issue.

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1 10. Those conclusions of fact (with which I agree and am unable to fault as they are
2 logical conclusions to be drawn from the evidence adduced) are as follows:-

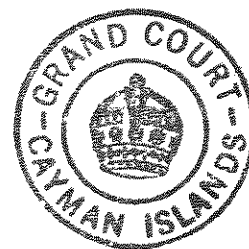
3 (a) The Appellant did not have permission to remain on the island after
4 25th September 2009;

5 (b) The Appellant remained and resided on the island thereafter until 16th
6 September 2011;

7 (c) The Appellant was not on or between the above dates employed by the
8 Government as defined by the Immigration Law. The Appellant
9 disputed this, arguing that he was a Government contractor. I agree
10 with the Magistrate's reasons for rejecting this contention;

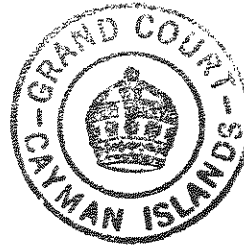
11 (d) The Appellant had no other basis or exemption permitting him to
12 remain on the island, in particular the fact that he was married to a
13 Caymanian did not affect his immigration status. The Appellant
14 appeared to place little reliance on this proposition in any event;

15 (e) The Appellant knew he was not entitled to reside and remain on the
16 island and therefore knowingly remained and resided on the island in
17 breach of the Immigration Law. He has considerable past experience
18 of complying with the island's immigration requirements. The
19 Appellant argued against this but I found his arguments to be
20 undermined by his considerable past experience and by his prior
21 compliance with the Immigration Law.



1 15. It follows that the appeal must be rejected. The conviction and sentence will stand
2 unchanged and are hereby confirmed.

3 16. I have considered the question of costs. The Respondent made no application for
4 costs. The Appellant has clearly found these proceedings extremely stressful and
5 his emotions were clear to be seen during the hearing. There will be no order as to
6 costs. The Appellant is released from the Recognizance signed by him on the 4th
7 March 2013.



11 **Dated this the 7th February 2014**

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A handwritten signature in black ink, appearing to read "Swift J.", is written over the lines 13, 14, and 15.

16 **Honourable Mr. Justice Malcolm Swift (Actg.)**
17 **Judge of the Grand Court**